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HANGINOUT, INC.

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

11 HANGINOUT, INC., a Delaware  
corporation,

12 Plaintiff,

13 vs.

14 GOOGLE, INC., a Delaware  
15 corporation,

16 Defendant.

Case No. '13CV2811 JAH NLS

**COMPLAINT FOR:**

- 1) **TRADEMARK INFRINGEMENT;**  
2) **FEDERAL UNFAIR  
COMPETITION; AND**  
3) **STATUTORY AND COMMON  
LAW UNFAIR COMPETITION**

**[JURY DEMANDED]**

17  
18 Hanginout, Inc. (“Hanginout” or “Plaintiff”) brings this suit for trademark  
19 infringement, federal unfair competition, and common law unfair competition against  
20 Google, Inc. (“Google” or “Defendant”) and alleges as follows:

21 **THE PARTIES**

22 1. Hanginout is a Delaware corporation with its principal place of business  
23 at 2712 Jefferson Street, Carlsbad, CA 92008.

24 2. Upon information and belief, Google is a Delaware corporation with its  
25 principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA  
26 94043.

1           3. Defendant's actions alleged herein were those of itself, its agents and/or  
2 licensees.

3                                   **JURISDICTION AND VENUE**

4           4. This Court's jurisdiction rests upon 15 U.S.C. § 1121(a); 28 U.S.C. §§  
5 1338(a) & (b); and 28 U.S.C. § 1367(a).

6           5. This Court has jurisdiction over the federal trademark infringement and  
7 false advertising claims pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. § 1338(a).

8           6. This Court has supplemental jurisdiction over the state law claims  
9 pursuant to 28 U.S.C. § 1338(b) and § 1367(a) as all claims herein form part of the  
10 same case or controversy.

11          7. Personal jurisdiction exists over the Defendant because it conducts  
12 substantial business in California, has its principal place of business in California, and  
13 therefore has sufficient contacts such that it would not offend traditional notions of  
14 fair play and substantial justice to subject Defendant to suit in this forum. Defendant  
15 purposefully directed its harmful conduct alleged below at this forum, and  
16 purposefully availed itself of the benefits of California with respect to the claims  
17 alleged herein. A substantial part of the protected intellectual property in this action  
18 exists in this district.

19          8. Venue in this district is proper under 28 U.S.C. § 1391 and 28 U.S.C.  
20 §1400 because a substantial part of the events or omissions giving rise to the claims  
21 occurred in this district.

22                                   **FACTUAL ALLEGATIONS**

23                                   **Hanginout's Background and Products**

24          9. Hanginout is a San Diego based technology company that has  
25 developed, produced, owns, and commercialized mobile-video based communication  
26 products.

1           10. Hanginout was formally founded in 2011, but developed its products at  
2 least as early as approximately 2009.

3           11. Hanginout developed an interactive video-response platform with real-  
4 time analytic solutions under the brand HANGINOUT. The platform analyzes  
5 website demographics, usage, and audience interests. The platform enable users to  
6 more effective develop, promote, and sell their brands by engaging, educating, and  
7 entertaining their customers.

8           12. The HANGINOUT application is a novel social-media application that  
9 gives users the ability to easily build and publish personal video profiles  
10 complimented with a video publishing tool to create mobile video content.

11           13. Utilizing the HANGINOUT application, a user can explore, find and  
12 follow interesting people, celebrities and personalities, ask them questions and  
13 receive instant personal video responses.

14           14. The HANGINOUT application also gives users the unique ability to  
15 field questions from anyone in the application, record and publish responses, and  
16 share them from anywhere at any time.

17                           **Federal Trademark Applications for Hanginout**

18           15. Given the importance of the brand HANGINOUT, Hanginout filed for  
19 U.S. trademark applications on July 12, 2012.

20           16. The U.S. Patent and Trademark Office assigned Hanginout Application  
21 Serial No. 85674801 (attached hereto as **EXHIBIT A**) for the HANGINOUT word  
22 mark and Application Serial No. 85674799 (attached hereto as **EXHIBIT B**) for the  
23 HANGINOUT design mark (collectively HANGINOUT marks).

24           17. The pending trademark applications for the HANGINOUT marks covers  
25 the following goods and services: “Computer application software for mobile devices  
26 for sharing information, photos, audio and video content in the field of  
27 telecommunications and social networking services” in International Class (“IC”) 009  
28

1 and “Telecommunications services, namely, providing online and telecommunication  
 2 facilities for real-time and on-demand interaction between and among users of  
 3 computers, mobile and handheld computers, and wired and wireless communication  
 4 devices; audio, text and video broadcasting services over the Internet or other  
 5 communications networks, namely, electronically transmitting audio clips, text and  
 6 video clips; electronic messaging services enabling individuals to send and receive  
 7 messages via email, instant messaging or a website on the Internet in the field of  
 8 general interest; providing online forums for communication on topics of general  
 9 interest; providing an online forum for users to share information, photos, audio and  
 10 video content to engage in social networking” in IC 038.

### 11 **Google Launches Google Hangouts**

12 18. On information on belief, on May 15, 2013, Google officially launched  
 13 its new messaging platform titled “Hangouts.”

14 19. On information and belief, Google’s “Hangouts” is a social-media based  
 15 video-chat service that enables both one-on-one and group chats. Hangouts can be  
 16 accessed through the Gmail or Google+ websites, or through mobile applications  
 17 available for Android and iOS.

18 20. On April 26, 2013, Google filed an application to register the mark  
 19 “Hangouts,” Application Serial No. 85916316.

20 21. Google’s “Hangouts” mark is nearly identical to Hanginout’s  
 21 HANGINOUT mark in both appearance and sound.

22 22. On information and belief, mirroring Hanginout’s products, Google’s  
 23 “Hangouts” trademark application sought to cover nearly identical mobile-video  
 24 based communication products including:

- 25 a. “Downloadable software for publishing and sharing digital media and  
 26 information via global computer and communication network; instant  
 27 messaging software; communications software for electronically  
 28

1 exchanging voice, data, video and graphics accessible via computer,  
2 mobile, wireless, and telecommunication networks; computer software  
3 for processing images, graphics, audio, video, and text; computer  
4 software development tools; computer software for use in developing  
5 computer programs; video and audio conferencing software” (IC 009);

6 b. “Telecommunications services, namely, electronic transmission of data  
7 and digital messaging via global computer and communication  
8 networks; providing online forums, chat rooms and electronic bulletin  
9 boards for transmission of messages among users in the field of general  
10 interest; digital multimedia broadcasting services over the Internet,  
11 namely, posting, displaying, and electronically transmitting data, audio  
12 and video; providing access to computer databases in the fields of  
13 general interest; instant messaging services; voice over ip (VOIP)  
14 services; video and audio conferencing services conducted via the web,  
15 telephone, and mobile devices; communications by computer terminals;  
16 local and long distance telephone services; mobile telephone  
17 communication services” (IC 038)

18 c. “Entertainment services, namely, providing temporary use of non-  
19 downloadable interactive multiplayer and single player games played via  
20 global computer and communication networks” (IC 041);

21 d. “Providing temporary use of on-line non-downloadable software for  
22 publishing and sharing digital media and information via global  
23 computer and communication networks; Providing temporary use of on-  
24 line non-downloadable software development tools; Providing  
25 temporary use of on-line non-downloadable software for use as an  
26 application programming interface (API); Providing a web hosting  
27 platform for others for organizing and conducting meetings, social  
28

1 events and interactive text, audio, and video discussions; Providing an  
2 on-line network environment that features technology that enables users  
3 to share data; computer software consulting; application service provider  
4 (ASP) services featuring computer software for transmission of text,  
5 data, images, audio, and video by wireless communication networks and  
6 the Internet; application service provider (ASP) services featuring  
7 computer software for electronic messaging and wireless digital  
8 messaging” (IC 042).

9 23. On July 30, 2013, the U.S. Patent and Trademark Office suspended  
10 Google’s Hangout application because of the HANGINOUT mark. The suspension  
11 notice is attached hereto as **EXHIBIT C**.

12 24. The suspension notice concluded that if the HANGINOUT mark  
13 registers, Google may be prevented from receiving a trademark registration for  
14 “Hangouts” based on likelihood of confusion with the HANGINOUT mark.

15 25. Google continues to aggressively market its Hangouts product.

16 26. Hanginout is informed and believes, and based thereon alleges, that  
17 Google has advertised Google’s Hangouts to replicate Hanginout’s products’  
18 capabilities. For example, Google has described its product capabilities as:

- 19 a. “Bring your conversations to life with photos, email, and video calls for  
20 free.”  
21 b. “Turn any Hangout into a live video call with up to 10 friends or simply  
22 search for a contact to start a voice call from your computer.”  
23 c. “Hangouts work the same everywhere- computers, Android, and Apple  
24 devices – so nobody gets left out.”  
25  
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**FIRST CAUSE OF ACTION**

**TRADEMARK INFRINGEMENT**

**(15 U.S.C. § 1114 *et seq.* and Common Law)**

27. Hanginout incorporates by reference all other paragraphs contained in this Complaint.

28. Google's Hangout mark is identical or substantially similar in sound, appearance and meaning to Hanginout's HANGINOUT marks.

29. Google has used the HANGINOUT marks or a confusingly similar variation of them, in connection with the sale, offering for sale, distribution or advertising of goods and/or services.

30. Google's wrongful use of the HANGINOUT marks constitutes trademark infringement of Hanginout's HANGINOUT marks, has caused significant confusion in the marketplace, and is likely to cause both confusion and mistake, along with being likely to deceive consumers.

31. Google's infringement of Hanginout's marks was willful and with knowledge that such its use of the "Hangout" mark would or was likely to cause confusion and deceive others.

32. As a direct and proximate result of Google's trademark infringement, Hanginout has been damaged within the meaning of 15 U.S.C. § 1114 *et seq.*

33. As a direct and proximate result of Google's trademark infringement, Hanginout has been damaged within the meaning of 15 U.S.C. § 1125 *et seq.*

34. Hanginout has suffered damages in an amount to be established after proof at trial.

35. Hanginout is further entitled to disgorge Google's profits for its willful sales and unjust enrichment.

1           36. Hanginout's remedy at law is not adequate to compensate for injuries  
2 inflicted by Google. Thus, Hanginout is entitled to temporary, preliminary and  
3 permanent injunctive relief.

4                                   **SECOND CAUSE OF ACTION**

5                                   **FEDERAL UNFAIR COMPETITION**

6                                   **(15 U.S.C. § 1125 *et seq.*)**

7           37. Hanginout incorporates by reference all other paragraphs contained in  
8 this Complaint.

9           38. Google has committed acts of unfair competition under 15 U.S.C. §  
10 1125 *et seq.*, including the practices and conduct referred to above. Not only does the  
11 conduct alleged constitute trademark infringement, but it also purposefully attempts  
12 to heighten the likelihood that consumers will be confused and an inaccurate  
13 appearance of affiliation created.

14           39. As a direct and proximate result of Google's wrongful acts, Hanginout  
15 has suffered and continues to suffer substantial pecuniary losses and irreparable  
16 injury to its business reputation and goodwill. As such, Hanginout's remedy at law is  
17 not adequate to compensate for injuries inflicted by Google. Accordingly, Hanginout  
18 is entitled to temporary, preliminary and permanent injunctive relief.

19           40. By reason of such wrongful acts, Hanginout is and was, and will be in  
20 the future, deprived of, among others, the profits and benefits of business  
21 relationships, agreements, and transactions with various third parties and/or  
22 prospective business relationship. Google has wrongfully obtained profit and  
23 benefits instead of Hanginout. Hanginout is entitled to compensatory damages and  
24 disgorgement of Google's said profits, in an amount to be proven at trial.



**THIRD CAUSE OF ACTION**

**STATUTORY (Cal. B&P 17200 *et seq.*) AND COMMON LAW UNFAIR  
COMPETITION**

41. Hanginout incorporates by reference all other paragraphs contained in this Complaint.

42. Google has committed acts of unfair competition, including the practices and conduct referred to in this Complaint. These actions constitute unlawful, unfair or fraudulent business acts or practices, and/or unfair, deceptive, untrue or misleading business practices. The actions were done in connection with sales or advertising.

43. As a direct and proximate result of Google's wrongful acts, Hanginout has suffered and continues to suffer substantial pecuniary losses and irreparable injury to its business reputation and goodwill. As such, Hanginout's remedy at law is not adequate to compensate for injuries inflicted by Google. Accordingly, Hanginout is entitled to temporary, preliminary and permanent injunctive relief.

44. By reason of such wrongful acts, Hanginout is and was, and will be in the future, deprived of, among other damages, the profits and benefits of business relationships, agreements, and transactions with various third parties and/or prospective business relationship. Google has wrongfully obtained profit and benefits instead of Hanginout. Hanginout is entitled to compensatory damages and disgorgement of Google's said profits, in an amount to be proven at trial.

45. Such acts, as alleged above, were done with malice, oppression and/or fraud, thus entitling Hanginout to exemplary and punitive damages.

WHEREFORE, Plaintiff demands the following relief for each cause of action unless otherwise noted:

1. A judgment in favor of Hanginout and against Google on all counts;
2. A preliminary and permanent injunction from trademark infringement and unfair business practices by Google;

3. Damages in an amount to be determined at trial;
4. Google's unjust enrichment and/or disgorgement of Google's profits;
5. Trebling of damages for willful infringement and unfair competition;
5. Exemplary and punitive damages (except as to relief for Cal. B&P  
17200 *et seq.*);
6. Pre-judgment interest at the legally allowable rate on all amounts owed;
8. Costs and expenses;
- 9 Attorney's fees and other fees under, among others, 15 U.S.C. § 1117(a)  
*et seq.* as an exceptional case;
10. Restitution; and
11. Such other and further relief as this Court may deem just and proper.

Dated: November 26, 2013

MINTZ LEVIN COHN FERRIS GLOVSKY  
AND POPEO PC

By /s/Andrew S. Skale, Esq.  
Andrew D. Skale  
Justin S. Nahama

Attorneys for Plaintiff  
HANGINOUT, INC.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial as to all issues that are so triable.

Dated: November 26, 2013

MINTZ LEVIN COHN FERRIS GLOVSKY  
AND POPEO PC

By /s/Andrew S. Skale, Esq.

Andrew D. Skale

Justin S. Nahama

Attorneys for Plaintiff  
HANGINOUT, INC.

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## General Information

<b>Court</b>	United States District Court for the Southern District of California
<b>Nature of Suit</b>	Property Rights: Trademark
<b>Docket Number</b>	3:13-cv-02811